PREFACE

1. This Consultative Document is one of a series setting out proposals to implement each of the first group of Directives made under Article 118A of the Treaty of Rome and adopted by the Council of Ministers of the European Community for implementation by member states by 31 December 1992.

2. In 1989 and 1990 the European Council of Ministers agreed, on the proposal of the European Commission, to a framework directive on health and safety, together with five other directives. The latter deal with health and safety requirements for the workplace; safety and health requirements for the use of work equipment for workers at work; the use of personal protective equipment; the manual handling of loads where there is a risk, particularly of back injury to workers; and health and safety requirements for work with display screen equipment.

3. Each Directive is, or will be, the subject of its own Consultative Document containing proposals for implementation by regulations made under Section 15 of the Health and Safety at Work etc. Act 1974. The Consultative Documents are expected to be published between October 1991 and January 1992. The Directives are listed in the box below with contact names and telephone numbers.

4. The Health and Safety Commission's policy on the negotiation of the EC's programme of health and safety directives has been set out in its Plans of Work for 1990-1 and 1991-2. We recognise that good progress had been made with the modernisation of British Health and Safety law by means of regulations made under the 1974 Act and that had stood us in good stead in advancing British models as a basis for EC provisions. Nevertheless we have had to acknowledge that the outcome of negotiations at Community level, especially under the new system of qualified majority voting introduced by the Single European Act, would

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necessarily involve the UK - and other countries - in compromises, which would require changes and additions to UK health and safety regulations to meet the objectives of the directives. This is particularly the case because the provisions of EC directives tend to be more prescriptive and detailed than objective-setting regulations made under HSWA in the UK.

5. It now falls to the Health and Safety Commission to put forward proposals for implementing this first group of directives in the UK. Our strategy for implementing the Framework and associated directives while meeting the objectives of the directives is:

to avoid disrupting the basic framework established by the Health and Safety at Work etc Act 1974, and also minimising change to the most recent regulations;

to continue, where appropriate, the modernisation of health and safety law made prior to 1974 and to take the opportunity to repeal outdated UK legislation;

to further the HSC/E philosophy of introducing control measures appropriate to the risk;

to propose regulations which meet the Directive, but which generally do not go beyond it, so as to minimise the impact of alterations in the law at a time when the requirements of the EC necessarily mean considerable changes in the law. Nevertheless the Commission proposes where appropriate to apply the directives to the self-employed and to public safety in conformity with the approach adopted in the HSWA and subsequent regulations.

Precisely how this is to be done depends on the terms of each directive and its relationships to UK law.

6. The Framework Directive mirrors the Health and Safety at Work Act by setting broad general duties on employers and

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employees in all working activities (except domestic service). The principles laid down will be familiar to those concerned with health and safety in the UK. They are embodied in modern legislation and are an essential part of good practice. But while the objectives of the framework directive coincide with those of existing UK law, the directive is generally more detailed on how those objectives are to be achieved. Consequently the proposals involve additional provisions, generally in areas covered by existing law but where the obligations of the directive are explicit rather than implicit.

7. In the case of some other directives the relationship to UK law is rather different. Again there is generally little difference in the objectives to be attained but the British law which corresponds to the Workplace Directive and the Use of Work Equipment Directive is found in legislation which preceded the 1974 Act and whose scope is limited to particular sectors of activity, principally the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963. In these cases it would be possible to meet the objectives of the directive by overlaying some new generally applicable provisions, or by trying to cover gaps in areas the law does not now cover. It seems best, however, in conformity with the duty under the 1974 Act to replace progressively older law by a system of regulations operating under the HSWA, to propose new general regulations. In the case of Personal Protective Equipment there is currently a mix of old style and new requirements. The approach is therefore generally to replace the former while enabling the latter to continue. The requirements of the Display Screens Equipment Directive are new and separate additional regulations will be proposed.

8. The Commission's aim is to produce a series of easily understood regulations setting objectives to be met, supported where necessary by Approved Codes of Practice (ACoPs) and/or other guidance containing practical advice.

9. We have sought to ensure that each set of proposals is consistent with the others and with any related proposals

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for which other government departments and agencies are responsible such as those being developed by the Department of Trade and Industry to implement Directives under Article 100A of the Treaty (e.g. the regulations to implement the Personal Protective Equipment Directive).

10. Other Directives (such as those on Carcinogens, and Biological Agents) have been or are being negotiated under Article 118A of the Treaty. Some particularly those on Extractive Industries and on Temporary or Mobile Worksites (principally the construction industry) will complement the first group by setting out provisions dealing with particular industries to which the workplace directive does not apply. Consultative documents will be issued in due course setting out proposals for their implementation.

CONTACTS FOR THE SIX DIRECTIVES

The Framework Directive
(Sarah Jones 071-243 6488)

The Workplace Directive
(Charles Leite 071-243 6389)

The Use of Work Equipment Directive
(Neville Higham 071-243 6255)

The Use of Personal Protective Equipment Directive
(Philip Lister 071-243 6346)

The Manual Handling Directive
(Robert Vaughan 071-243 6346)

The Display Screen Equipment Directive
(Nigel Watson 071-243 6116)

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CONSULTATIVE DOCUMENT ON PROPOSALS FOR HEALTH AND SAFETY (GENERAL PROVISIONS) REGULATIONS AND AN APPROVED CODE OF PRACTICE

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INTRODUCTION

1. This consultative document seeks views on proposals by the Health and Safety Commission for new regulations and an associated approved code of practice (ACoP). The proposed regulations have two purposes:-

i) to implement within Great Britain those provisions of the European Community (EC) Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work (known as the framework directive), which will not be adequately implemented either by existing or by other proposed legislation[1]. The directive must be implemented in all EC Member States by 31 December 1992.

ii) to implement within Great Britain provisions of the EC Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (known as the temporary workers directive), which was adopted on 25 June 1991. This directive also must be implemented by 31 December 1992.

2. The draft proposals for regulations are at Annex 1. The draft ACoP is at Annex 2. The texts of the framework and temporary workers' directives are at Annexes 3 and 4 respectively.

3. To comply with the directives, the implementing regulations must come into force no later than 1 January

[1] For example the Home Departments will be publishing complementary proposals on fire safety at work.

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1993. To allow the Commission time to consider and take account of comments on its proposals before submitting them to the Secretary of State, it is important that comments should be sent to arrive no later than 21 February 1992.

BACKGROUND

The Framework Directive.

4. The framework directive (Annex 3) was adopted on 12 June 1989. It is the first of a series of directives adopted under Article 118A of the Treaty aimed at setting minimum requirements on health and safety within the European Community. The framework directive deals with general principles and applies in full to all the areas covered in associated directives provided for in Article 16. Proposals for implementing the associated directives will be the subject of further consultative documents.

5. The framework directive mirrors the Health and Safety at Work etc Act 1974 by setting broad general duties on employers and employees in all working activities (except domestic service). It places the primary responsibility for ensuring health and safety on employers. In carrying out their responsibility, employers are in effect obliged to assess the risks at work and take measures to prevent or reduce them. These measures include designating competent personnel for health and safety purposes, providing information and training for employees, consulting employees or their representatives, and instituting emergency arrangements. Employees also have duties to take care of their own and others' health and safety and to co-operate with their employers.

6. These principles will be familiar to those concerned with health and safety in this country. They are embodied in modern legislation, including the 1974 Act, and are an essential part of good practice. Indeed, existing health and safety law already goes a long way towards meeting the requirements of the directive. The 1974 Act assigns the

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general responsibilities of employers and employees (and others). It is implicit in the general duties of the Act that employers should assess workplace risks and introduce appropriate measures. The Act and subordinate regulations contain requirements on information, training, consultation, emergency arrangements and, in a few cases, the designation of "competent persons" for specific tasks. Some of the detailed requirements of the directive are expressly covered in existing regulations (eg. Articles 8(1) and 8(2) on first-aid are met by the Health and Safety (First-Aid) Regulations 1981; Articles 9(1)(c) and (d) are met by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1985 (RIDDOR)).

7. However, while the objectives of the framework directive coincide with those of existing GB law, the directive is generally more detailed on how those objectives are to be achieved. This level of detail reflects the wishes of the majority of EC Member States. Implementation of the directive requires new regulations to supplement the existing law (except for Article 6(2) of the directive setting out general principles of prevention, for which an approved code of practice is sufficient).

8. The impact of the new regulations will vary, of course, depending on the extent of existing law. For example:

- the key requirement to assess risks for the purpose of identifying protective and preventive measures is already implicit in section 2 of the HSW Act and explicit in many other regulations such as the Control of Substances Hazardous to Health (COSHH), Noise, Lead and Asbestos;

- the new requirements on information and training for employees do not in practice go much beyond Section 2(2)(c) of the 1974 Act;

- most workers affected by the new requirement for health surveillance are already covered by the

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requirements for health surveillance under existing regulations such as COSHH, Asbestos, Ionising radiations and Lead. The main areas not already covered are exposure to physical agents and to repetitive movement;

- the proposals regarding safety representatives are modest extensions of existing provisions;

- the new provisions imposing duties on employees do not go much beyond section 7 and 8 of the HSW Act.

On the other hand, the proposal for a new general duty to appoint competent people to assist with health and safety will be a novel development in health and safety law, though reflecting a common practice in many parts of industry.

The Temporary Workers Directive

9. The framework directive covers all types of employees, including temporary ones. However, the EC has supplemented the framework with a directive aimed specifically at two types of temporary workers, those on fixed-duration contracts and those employed by employment businesses (Annex 4). The directive is concerned primarily with the provision of information to temporary employees. As many temporary workers move from workplace to workplace, perhaps staying only a short time in any one place, they have a clear need for information on health and safety risks. The directive also makes it clear that where the employee of an employment business works for and under the control of a user employer, both the user and the employment business have responsibilities for the employee's health and safety.

10. These principles are present in the 1974 Act and in the framework directive. As with the framework, however, their means of implementation are set out in greater detail in the temporary workers directive. As such its implementation requires information provisions in regulations which make

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express reference to temporary workers (see draft regulation 12). Other provisions of the directive are optional (eg. Article 5(1) on prohibiting temporary work in certain circumstances). The Commission considers that there is no need on health and safety grounds to take such action in this country.

Modification of the Safety Representatives and Safety Committees Regulations 1977

11. As well as the substantive provisions of the proposed General Provisions Regulations, implementation of the framework directive requires some modification of the Safety Representatives and Safety Committees Regulations 1977. This will set out in more detail the subjects on which consultation with safety representatives should take place and extend the present requirement on employers to provide facilities and assistance to safety representatives. These changes would also cover the consultation requirements of the individual directives under Article 16 of the framework.

12. These changes, though modest, should help to increase the effectiveness of safety representatives by regularising practice within industry. A recent research study[2] published by HSE revealed considerable variation in the extent to which safety representatives are consulted on health and safety matters and in the support given to safety representatives.

13. It might be necessary to extend the 1977 regulations to coal mines. This document makes no proposals for legislative change to achieve this but certain options are considered in paras 43-45. The Offshore Installations

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[2] "Statutory Employee Involvement in Health and Safety at the Workplace: A Report of the Implementation and Effectiveness of the Safety Representatives and Safety Committees Regulations 1977"; D Walters and S Gourlay, Centre for Industrial Safety and Health, South Bank Polytechnic. HSE Contract Research Report 20/1990, available from HSE, price £30, ISBN 07176 03598.

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(Safety Representatives and Safety Committees) Regulations 1989 are being reviewed by the Health and Safety Executive and will incorporate similar provisions on consultation when revised.

THE HEALTH AND SAFETY COMMISSION'S APPROACH

14. In transposing the requirements of a directive into health and safety regulations, we are not obliged to adhere strictly to the wording of the directive, though the effect must be the same, including the detail. In drawing up these proposals, the Commission has taken great care to ensure that the two directives are fully implemented in as constructive and flexible a way as possible, without imposing unnecessary burdens on industry. But it was also borne in mind that any new health and safety regulations should make an effective contribution to improving health and safety standards.

15. Of paramount importance has been the need to dovetail the new regulations within the existing framework of health and safety law while minimising changes to existing regulations, particularly the most recent. No elegant way exists for achieving this since most, if not all, of the provisions of the framework directive are either partly covered by or implicit in the general duties of the 1974 Act and its subsidiary regulations. However, we believe that the proposals, which follow the structure of existing GB law, particularly the Control of Substances Hazardous to Health (COSHH) Regulations, represent the best approach.

16. Central to the proposed regulations is a duty to assess risk implementing article 6(3)(a) of the framework directive (draft regulation 3). Many of the other regulations are linked to the results of the risk assessment and together set out the basic steps for ensuring health and safety at the workplace. Thus the risks identified by the assessment must lead to the identification of the protective and preventive measures needed to ensure compliance with all the requirements of health and safety law (draft regulation 3).

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Appropriate health and safety arrangements must be introduced in relation to those measures (draft regulation 4). The measures would include appropriate health surveillance (draft regulation 5), information and training (draft regulations 8 and 10) where the assessment shows these to be necessary. To help him to carry out the protective measures, the employer may need to appoint competent people from the staff or from outside the organisation (draft regulation 6). Further details are given below in the section outlining the proposals.

17. These basic steps can apply to all types of working activity and all sizes of undertaking. This does not mean, of course, that the same type and complexity of preventive measures must be introduced in all cases. The key to this approach is that measures should be related to the level of risk. Where the level of risk is low, measures can be minimal. Nor do all activities require the same type of risk assessment - it must be "adequate" according to the circumstances. However, both the assessment and the health and safety arrangements will need to be recorded where employers have five or more employees (draft regulations 3(5) and 4(2)). The draft approved code of practice (Annex 2) gives guidance on how to apply the steps required by the proposed regulations in individual workplaces.

18. Ensuring consistency with existing legislation also extends to the scope of the proposed new regulations. The framework directive and the 1974 Act apply similarly to employers and employees, but the Act applies also to non-employees. The Act considers everyone at risk from working activities. Health and safety regulations therefore normally make provision for the self-employed, the public etc, where appropriate. In drawing up proposals to implement the framework directive, the Commission has followed its usual policy of taking non-employees into account where it is sensible to do so, even though this is not required by the directive.

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19. In fact, the application of the proposals to non-employees would be limited. Employers' risk assessments would have to take account of everyone put at risk by their activities. Similar duties would apply to the self-employed. However, the majority of detailed requirements on health surveillance, information, training and emergency arrangements would concern only employees. In effect, non-employees would be covered only where anomalies would arise if they are <u>not</u> covered.

20. Overall, the proposed regulations aim to set out a blueprint for the development and implementation of effective arrangements for health and safety, adaptable to all circumstances. The elements are not new. They are already practised widely, sometimes unconsciously, by employers with a successful approach to health and safety. <u>Good</u> written safety policy statements, as required by Section 2(3) of the 1974 Act, should demonstrate that the appropriate measures have been determined and applied. Unfortunately, HSE Inspectors find all too often that a structured, well-thought out approach to health and safety is lacking, in organisations of all sizes. Many health and safety policy statements[3] are either inadequate or, while adequate on paper, do not reflect reality.

21. Central to effective health and safety arrangements is the need for an effective management structure into which health and safety needs are fully integrated. It is essential that health and safety responsibilities are understood and acted on at all levels - from the individual employee, through the supervisor, junior manager, senior manager to the board of directors. Inquiries into a number of serious incidents in recent years have revealed major deficiencies in the way that management structures have dealt with health and safety, even in the very largest organisations. Top management has often failed to recognise

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[3] Employers with less than 5 employers are not required to have a <u>written statement</u> of their health and safety policy, but still need a policy of ensuring compliance with their duties under health and safety law.

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and accept its responsibilities in this area, sometimes with very serious consequences.

22. The Commission's proposals, particularly draft regulation 4 and relevant parts of the draft ACoP, emphasise the need for improvement in the arrangements for health and safety. Even organisations with good health and safety records can benefit from a review of their arrangements. For other organisations, these proposals are intended to lead to the introduction and maintenance of effective arrangements.

Relation of the Proposed Regulations With Other Regulations

23. The broad requirements of the proposed regulations would apply over similar but more specific duties (eg for carrying out risk assessment or for the appointment of personnel to carry out specific tasks) in very many existing health and safety regulations, as well as future regulations particularly those implementing other directives in the framework group. But this should not be burdensome or confusing. The draft ACoP explains that where the broad duties overlay more specific duties, compliance with the more specific duties will normally be sufficient to comply with the broader one. This will only apply, of course, to the extent that the duties coincide. Elements in the broader duty which are absent from the more specific one will still have to be complied with.

OUTLINE OF MAIN PROPOSALS

Scope

24. The regulations would apply to all working activities to which the Health and Safety at Work Act applies, including offshore activities. Like the Health and Safety at Work Act itself they are intended to underly rather than replace more detailed requirements relating to particular industries, processes and hazards. In some cases such legislation spells out the responsibilities of owners and

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managers as well as employers. These Regulations are not intended to change the structure of duties relating to employers, owners and managers of mines and quarries or offshore installations. They are also intended to be consistent with the new framework of duties likely to be proposed for construction sites in regulations to implement the Temporary and Mobile Construction Sites directive when adopted, and with proposals for safety cases and safety management systems for offshore installations, on which the Health and Safety Commission will issue a consultative document shortly. The Commission will be paying particular attention to questions of compatibility and consistency both with existing and proposed legislation, but consultees are invited to comment on these aspects.

25. However, sea and air transport are excluded as implementation of the directives in these sectors will be the responsibility of the Department of Transport. Sea transport includes the sea fishing industry.

26. The regulations would impose duties on employers and, in some cases, the self-employed (draft regulations 3(2), 3(3), 9 and 12) and employees (draft regulation 11). Duties would be owed to employees and, in a few cases, to non-employees (draft regulations 3, 4, 6, 9 and 11). Employees include trainees as a consequence of the Health and Safety (Training for Employment) Regulations 1990. The regulations would also make special provision for co-operation and co-ordination where employees of different employers (including employees of employment businesses) and the self-employed work together (draft regulation 9).

Risk Assessment

27. Employers and the self-employed would have to assess the risks to anyone who might be affected by their working activities (draft regulation 3). Assessments would have to be revised if they cease to be valid. Employers with five or more employees would have to make their assessment in writing and record any group of employees identified to be

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at high risk. The findings of the risk assessment will govern the way that employers and the self-employed comply with most of their subsequent duties.

Protective and Preventive Measures

28. The purpose of assessing risk under regulation 3 is to enable employers and the self-employed to identify the measures they need to take to comply with their duties under the relevant statutory provisions (ie the HSW Act and all associated Acts and regulations). The measures identified are the "protective and preventive measures". They could include, where appropriate, matters covered by subsequent duties (eg. health surveillance, information, training).

Health and Safety Arrangements

29. Employers would have to introduce arrangements for health and safety (ie the planning, organisation, control, monitoring and review) in relation to the protective and preventive measures. Employers with five or more employees would have to record the arrangements introduced (draft regulation 4).

Health Surveillance

30. Employers would have to provide appropriate health surveillance for their employees where the risk assessment shows a need for it (draft regulation 5).

Health and Safety Assistance

31. Employers would have to appoint competent persons to assist them in undertaking the measures they need to take to ensure compliance with their duties under health and safety law. Competent persons could be employees, outside services (eg. consultants), or in some circumstances the employer (where <u>not</u> a body corporate or self-employed person) themselves. They would have to satisfy themselves of their own or others' competence, according to the general

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definition of "sufficient training, experience, knowledge and other qualities". An employer who appoints competent persons would have to make arrangements for their co-operation. He would also have to ensure that they receive the information and other facilities they need to carry out their tasks (draft regulation 6).

Serious and Imminent Danger

32. Employers would have to establish procedures, in the light of their risk assessments, to be followed in the event of serious and imminent danger to their employees (draft regulation 7). These procedures would include specifying the circumstances in which employees could stop work or take other remedial action.

Provision of Information to Employees

33. Employers would be required to provide their employees with relevant and comprehensible information on health and safety risks, protective and preventive measures, emergency arrangements and other related matters. What is relevant would be determined largely by the results of the risk assessment under regulation 3 (draft regulation 8).

Co-operation and co-ordination

34. Where employees of different employers (eg contractors, employment businesses), or the self-employed, work together on the same premises, their employers and the self-employed would have to co-operate for health and safety purposes, co-ordinate their protective and preventive measures and exchange health and safety information (draft regulation 9). Information on risks and measures would have to be passed on to the employees concerned.

35. The Commission has long been concerned with the need to ensure effective co-ordination of health and safety measures where different employers and the self-employed share a work site. These proposals attempt to deal with the problem by

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putting duties on each individual employer or self-employed person, in line with the approach of the framework directive. However, it is possible to go further. In some sectors (mines and quarries, offshore installations), health and safety legislation puts overall responsibility on one person (normally the manager). In construction, the forthcoming Temporary and Mobile Construction Sites Directive is expected to put duties on a site health and safety co-ordinator.

36. In principle, there could be a duty on someone in all sectors to ensure that co-ordination takes place. The difficulty with this is to identify the appropriate person in all circumstances on whom to place the duty. Different people might be appropriate in different sectors. In some circumstances, there might be no suitable candidate. Consultees are therefore invited to comment on the following options:-

(i) to put a general duty on employers and the self-employed as proposed in the draft regulations, with the appointment of a co-ordinator as one means of complying with the duty (as explained in para 31 of the approved code); or

(ii) to devise a formula which would require a co-ordinator in all cases, in which case suggestions on how to achieve this would be welcome.

Health and Safety Training and Capabilities

37. Employers would have to ensure that their employees receive adequate health and safety training on recruitment and if exposed to new risks on transfer or the introduction of new equipment, work systems, or technology (draft regulation 10). Training would have to be repeated periodically if necessary and adapted to take account of new or changed risks. Employers would also have to take account of their employees' health and safety capabilities when entrusting them with tasks.

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Employees' Duties

38. Employees would have to make correct use of (ie in accordance with the instruction and training they have received), and not interfere with, any machinery, equipment, dangerous substance, transport equipment, means of production or safety device (draft regulation 11(1)). They would also have to inform their employer or his representative of anything which may reasonably be a serious danger to health and safety or a shortcoming in the employer's health and safety arrangements (draft regulation 11(2)).

Temporary Workers

39. The provisions on information for employees and other workers (draft regulations 8 and 9) would be supplemented by requirements relating specifically to temporary workers, whether on short-term contracts or employed by employment businesses. Employers and the self-employed would have to provide certain details (eg occupational qualification or skill requirements) to the workers, as well as similar information to employment businesses (draft regulation 12).

Safety Representatives

40. The Safety Representatives and Safety Committees Regulations 1977 would be modified:-

i) to specify, without prejudice to Section 2(6) of the 1974 Act, a number of circumstances in which employers would have to consult safety representatives on health and safety matters;

ii) to require employers to provide reasonable facilities and assistance to safety representatives to allow them to carry out all their statutory functions (draft regulation 15 and the Schedule).

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DRAFT APPROVED CODE OF PRACTICE

41. The draft ACoP (Annex 2) gives guidance on complying with the duties in the proposed General Provisions Regulations and related legislation (primarily the general duties of the 1974 Act). This includes the general principles set out in Article 6(2) of the framework directive.

42. There may need to be additional ACoPs in respect of certain sectors (eg construction). In some cases these may provide supplementary guidance on specific aspects. In other cases, they may provide full guidance and would be read in place of this general Code.

CONSULTATION IN COAL MINES

43. The consultation and associated requirements of the framework directive (Articles 6(3)(c) and 11, Annex 3) apply to all work activities, including coal mines. However, the 1977 Regulations, as modified, which implement these provisions of the directive, do not apply to coal mines. This is because there are separate requirements for workmen's inspection under section 123 of the Mines and Quarries Act 1954, supplemented by collective agreements between the mining unions and employers. The main provisions of the directive (on consultation, on the right to make representations to the employer and on rights to paid time off and to receive training) go beyond the requirements of section 123, though they are covered to some extent by collective agreements.

44. There are several possible ways of complying with the directive's requirements in relation to coal mines:-

(i) repealing section 123 and extending the 1977 Regulations, as modified, to coal mines. This would involve little legislative change and would ensure that the same rights are available in all

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industries. On the other hand, it would involve changing a system which has worked well in the coal industry for many years.

(ii) extending the 1977 Regulations, as modified, to coal mines, but without repealing section 123. This would involve even less legislative change than (i) and would extend the benefits of the 1977 Regulations without the need for major changes to the present system. However, it would be legislatively untidy and might lead to conflict, though both systems (i.e those under section 123 and under the 1977 Regulations) have co-existed in non-coal mines and in quarries for some years without causing any problems.

(iii) amending section 123 to extend to the workmen's inspectors appointed under that section the relevant functions and rights of safety representatives under the 1977 Regulations, plus the modifications proposed in this consultative document. This would cover the directive's requirements on consultation, paid time off, training etc. At the same time it would be sensible in general to extend to workmen's inspectors the broader rights of safety representatives to information, to investigate hazards and complaints, and other matters covered by the 1977 Regulations. This would achieve the objective of the directive, but amendment is likely to be difficult and complex as the structure of section 123 is not easily compatible with that of the directive (which much more closely mirrors the 1977 Regulations). There would still be differences between coal mines and other industries, though at this stage it is not clear how significant these differences would be.

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(iv) relying only on collective agreements to comply with the directive. This would avoid the need for legislation, but some extension of the existing agreements would be needed, which could not be imposed on the parties concerned. As such agreements are not legally binding, it is unlikely that this would be sufficient to satisfy the European Commission of compliance with the directive.

45. The Commission has not yet decided which of these approaches to propose, though the approach that is finally adopted should not lead to unnecessary differences between coal mining and other industries. The Commission would welcome views, particularly from those concerned with the coal mining industry, on which of the above options should be pursued.

COSTS AND BENEFITS

46. In principle, most of the requirements of the proposed Regulations should already be carried out by employers and the self-employed to comply with their general duties under the 1974 HSW Act. Additional costs, however, are likely to arise where the Regulations require employers and the self-employed to adopt a more detailed and structured approach to meeting their health and safety responsibilities. Quantifying these costs with any degree of confidence is extremely difficult because of lack of data.

47. The cost of preparing the risk assessment is estimated to be between around £4 million and £42 million initially and between £½ million and £4 million a year thereafter. Documenting the health and safety arrangements is estimated at around £8½ million in the first year and around £1 million a year thereafter. The requirement for competent health and safety assistance in undertaking the protective and preventive measures may cost firms around £55 million a year and the provision of information and training for employees around £10 million a year. It is therefore

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estimated that the initial cost of complying with the Regulations could be around £12½ - £50 million and the continuing costs in the region of £70 million a year.

48. By effectively making good health and safety management a legal requirement involving improved technical advice and clearer accountability, these regulations should help to tackle bad management which has been found to be responsible for around 70% of fatal accidents. Given that accidents at work are estimated to cost over £2 billion a year the potential benefit from better health and safety management is considerable. If just 5% of all the accidents that are estimated to be potentially preventable by management action were actually prevented as a result of these measures then the additional costs involved would be covered. Furthermore better health and safety management should help ensure that existing spending is better directed.

CONCLUSION

49. The Commission would welcome comments on any aspects of these proposals at Annexes 1 and 2, as well as views on the specific questions raised at paras 24, 36 and 45 of this document.

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HEALTH AND SAFETY

Draft Health and Safety (General Provisions) Regulations 199-

Draft proposals for Regulations to be made under sections 15(1), (2), (5)(a) and (b) and (9) and 52(2) and (3) of, and paragraphs 6, 7, 8(1), 14 and 15(1) of Schedule 3 to, the Health and Safety at Work etc. Act 1974[4] ("the 1974 Act").

Arrangement of Regulations

1. Citation, commencement and interpretation.
2. Disapplication of duties.
3. Risk assessment.
4. Health and safety arrangements.
5. Health surveillance.
6. Health and safety assistance.
7. Procedures for serious and imminent danger.
8. Information for employees.
9. Co-operation and co-ordination.
10. Capabilities and training.
11. Employees' duties.
12. Temporary workers.
13. Exemption certificates.
14. Extension outside Great Britain.
15. Modification of instrument.

The Schedule.

([4]) 1974 c.37; sections 15 and 50 were amended by the Employment Protection Act 1975 (c.71), Schedule 15, paragraphs 6 and 16 respectively.

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Citation, commencement and interpretation

1. -(1) These Regulations may be cited as the Health and Safety (General Provisions) Regulations 199- and shall come into force on 1 January 1993.

(2) In these Regulations -

"the assessment" means the assessment carried out by the employer or by the self-employed person in accordance with paragraph (1) or, as the case may be, paragraph (2) of regulation 3, revised as necessary in accordance with regulation 3(3);

"employment business" means a business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) which supplies persons (other than seafarers) who are employed by it to act for and under the control of other persons in any capacity;

"fixed-term contract of employment" means a contract of employment for a specific term which is fixed in advance or which can be ascertained in advance by reference to some relevant circumstance; and

"the protective and preventive measures" means the measures which have been identified by the employer or by the self-employed person in consequence of the assessment as the measures he needs to take to comply with his duties under the relevant statutory provisions.

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(3) Any reference in these Regulations to -

(a) a numbered regulation is a reference to the regulation in these Regulations so numbered; or

(b) a numbered paragraph is a reference to the paragraph so numbered in the regulation in which the reference appears.

Disapplication of duties

2. The duties imposed by these Regulations shall not apply in relation to -

(a) the master or crew of a sea-going ship or to the employer of such persons, in respect of the normal ship-board activities of a ship's crew under the direction of the master; or

(b) the crew of any aircraft or hovercraft which is moving under its own power or any other person on board any such aircraft or hovercraft who is at work in connection with its operation.

Risk assessment

3. -(1) Every employer shall adequately assess -

(a) the risks to the health and safety of his employees to which they are exposed whilst they are at work; and

(b) the risks to the health and safety of persons not in his employment arising out

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of or in connection with the conduct by him of his undertaking,

for the purpose of identifying the measures he needs to take to comply with his duties under the relevant statutory provisions.

(2) Every self-employed person shall adequately assess -

(a) the risks to his own health and safety to which he is exposed whilst he is at work; and

(b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,

for the purpose of identifying the measures he needs to take to comply with his duties under the relevant statutory provisions.

(3) Where an employer or a self-employed person has reason to believe that the assessment is no longer valid because of new or changed risks, he shall revise it by adequately assessing those risks for the purpose of identifying the measures he needs to take to comply with his duties under the relevant statutory provisions.

(4) The references in paragraphs (1) (2) and (3) to assessing risks are references to identifying hazards and evaluating the extent of risk arising therefrom.

(5) Where the employer employs five or more employees -

(a) the assessment shall be in writing; and

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(b) he shall record any group of his employees identified by the assessment as being especially at risk.

Health and safety arrangements

4. -(1) Every employer shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of the protective and preventive measures.

(2) Where the employer employs five or more employees, he shall record the arrangements referred to in paragraph (1).

Health surveillance

5. Every employer shall ensure that his employees are provided with such health surveillance as is appropriate having regard to the risks to their health and safety which are identified by the assessment.

Health and safety assistance

6. -(1) Every employer shall, subject to paragraph (2), appoint one or more competent persons to assist him in undertaking the protective and preventive measures.

(2) Nothing in paragraph (1) shall require an employer who is a self-employed person or who is not a body corporate to appoint any person where, having regard to the nature of his activities and the size of his undertaking, he is competent to undertake the protective and preventive measures without any assistance.

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(3) Where an employer appoints persons in accordance with paragraph (1), he shall make arrangements for ensuring adequate co-operation between the persons concerned.

(4) The employer shall ensure that the number of persons appointed under paragraph (1), the time available for them to fulfil their functions and the means at their disposal are adequate having regard to the size of his undertaking, the risks to which his employees are exposed and the distribution of those risks throughout the undertaking.

(5) Every employer shall ensure that -

(a) any person appointed by him in accordance with paragraph (1) who is not in his employment -

(i) is informed of the factors known by the employer to affect, or suspected by him of affecting, the health or safety of the employer's employees whilst they are at work, and

(ii) has access to the information referred to in regulation 8; and

(b) any person appointed by him in accordance with paragraph (1) is given such information about any person working in the employer's undertaking but employed by an employment business as is necessary to enable a person so appointed properly to carry out the function specified in that paragraph.

(6) A person shall be regarded as competent for the purposes of paragraph (1) or (2) where he has sufficient training, experience, knowledge or other qualities to enable

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him properly to assist in undertaking the protective and preventive measures or, as the case may be, to undertake the protective and preventive measures without any assistance.

Procedures for serious and imminent danger

7. -(1) Every employer shall -

(a) establish and where necessary give effect to appropriate procedures to be followed in the event of serious and imminent danger to persons at work in his undertaking; and

(b) nominate a sufficient number of competent persons to implement those procedures insofar as they relate to the evacuation from premises of such persons as are specified in sub-paragraph (a) above.

(2) Without prejudice to the generality of paragraph (1)(a), the procedures referred to in that sub-paragraph shall -

(a) so far as is practicable, require any persons at work who are exposed to serious and imminent danger to be informed of the nature of the hazard and of the steps taken or to be taken to protect them from it;

(b) enable the persons concerned (if necessary by taking appropriate steps in the absence of guidance or instruction and in the light of their knowledge and the technical means at their disposal) to stop work and immediately proceed to a place of safety in the event of their being exposed to

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serious, imminent and unavoidable danger; and

(c) require the persons concerned to be prevented from resuming work in any situation where there is still a serious and imminent danger.

(3) A person shall be regarded as competent for the purposes of paragraph (1)(b) where he has sufficient training, experience, knowledge or other qualities to enable him properly to implement the evacuation procedures referred to in that sub-paragraph.

Information for employees

8. Every employer shall provide his employees with comprehensible and relevant information on -

(a) the risks to their health and safety identified by the assessment;

(b) the protective and preventive measures;

(c) the procedures referred to in regulation 7(1)(a);

(d) the identity of those persons nominated by him in accordance with regulation 7(1)(b); and

(e) the risks notified to him in accordance with regulation 9(1)(c).

Co-operation and co-ordination

9. -(1) Where two or more employers share a workplace (whether on a temporary or a permanent basis) each such employer shall -

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(a) co-operate with the other employers concerned so far as is necessary to enable them to comply with their duties under the relevant statutory provisions;

(b) (taking into account the nature of his activities) take all reasonable steps to co-ordinate the measures he takes to comply with his duties under the relevant statutory provisions with the measures taken in that regard by the other employers concerned; and

(c) inform the other employers concerned of the risks to their employees' health and safety arising out of or in connection with the conduct by him of his undertaking.

(2) Paragraph (1) shall apply to employers sharing a workplace with self-employed persons and to self-employed persons sharing a workplace with other self-employed persons as it applies to employers sharing a workplace with other employers; and, accordingly, references in that paragraph to employers and to the employees of employers include references to self-employed persons.

(3) Every employer and every self-employed person shall ensure that the employer of any employees who are working in his undertaking is provided with comprehensible information on -

(a) the risks to those employees' health and safety which arise out of or in connection with the conduct by that first-mentioned employer or by that self-employed person of his undertaking; and

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(b) the measures taken by that first-mentioned employer or by that self-employed person in compliance with his duties under the relevant statutory provisions insofar as those duties relate to the employees concerned.

(4) Paragraph (3) shall apply to a self-employed person working in the undertaking of an employer or a self-employed person as it applies to employees working therein; and, accordingly, the references in that paragraph to the employer of any employees who are working in such an undertaking and to those employees shall include a reference to a self-employed person.

(5) Every employer and every self-employed person shall ensure that any person working in his undertaking who is not his employee is provided with appropriate instructions regarding any risks to their health and safety arising out of or in connection with the conduct by that employer or self-employed person of his undertaking.

(6) Every employer shall -

(a) ensure that the employer of any employees who are working in his undertaking is provided with sufficient information to enable him to identify any person nominated by that first-mentioned employer in accordance with regulation 7(1)(b) to implement evacuation procedures as far as those employees are concerned; and

(b) take all reasonable steps to ensure that any employees of another employer who are working in his undertaking receive sufficient information to enable them to identify any person nominated by him in accordance with regulation 7(1)(b) to

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implement evacuation procedures as far as they are concerned.

(7) Paragraph (6) shall apply to a self-employed person working in an employer's undertaking as it applies to employees working therein; and, accordingly, the references in that paragraph to the employer of any employees who are working in such an undertaking and to those employees shall include a reference to a self-employed person.

Capabilities and training

10. -(1) Every employer shall, in entrusting tasks to his employees, take into account their capabilities as regards health and safety.

(2) Every employer shall ensure that his employees are provided with adequate health and safety training -

(a) on their being recruited into the employer's undertaking;

(b) on their being exposed to new or increased risks because of -

(i) their being transferred or given a change of responsibilities within the employer's undertaking;

(ii) the introduction of new work equipment into or a change respecting work equipment already in use within the employer's undertaking;

(iii) the introduction of new technology into the employer's undertaking;

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(iv) the introduction of a new system of work into or a change respecting a system of work already in use within the employer's undertaking.

(3) The training referred to in paragraph (2) shall -

(a) be repeated periodically where appropriate;

(b) be adapted to take account of any new or changed risks to the health or safety of the employees concerned; and

(c) take place during working hours.

Employees' duties

11. -(1) No employee shall -

(a) use any machinery, equipment, dangerous substance, transport equipment, means of production or safety device provided to him by his employer other than in accordance with any instruction and training respecting such use which has been provided to him by that employer in compliance with his duties under the relevant statutory provisions; or

(b) interfere with any of the items so provided.

(2) Every employee shall inform his employer or any other employee of that employer with specific responsibility for the health and safety of his fellow employees -

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(a) of any work situation which may reasonably be considered to represent a serious and immediate danger to health and safety; and

(b) of any matter which may reasonably be considered to represent a shortcoming in the employer's protection arrangements for health and safety,

insofar as that situation or matter either affects the health and safety of the employee concerned or arises out of or in connection with his own activities at work, and has not previously been reported to that employer or to any other employee of that employer in accordance with this paragraph.

Temporary workers

12. -(1) Every self-employed person shall provide any employee of an employment business who is to carry out work in his undertaking with comprehensible information about the risks to that employee's health and safety to which he will be exposed whilst carrying out the work concerned.

(2) Every employer shall (before the employee concerned commences his duties) provide any person employed by him under a fixed-term contract of employment or working in his undertaking but employed by an employment business with comprehensible information on -

(a) any special occupational qualifications or skills required to be held by that employee if he is to carry out his work safely; and

(b) any health surveillance required to be provided to that employee under any of the relevant statutory provisions.

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(3) Every self-employed person shall provide any employee of an employment business who is to carry out work in his undertaking with comprehensible information on -

(a) any special occupational qualifications or skills required to be held by that employee if he is to carry out his work safely; and

(b) any health surveillance required to be provided to that employee under any of the relevant statutory provisions.

(4) Every employer and every self-employed person shall ensure that every employment business whose employees are to carry out work in his undertaking is provided with comprehensible information on -

(a) any special occupational qualifications or skills required to be held by those employees if they are to carry out their work safely; and

(b) the specific features of the jobs to be filled by those employees (insofar as those features are likely to affect their health and safety);

and the employment business concerned shall ensure that the information so provided is given to the said employees.

Exemption certificates

13. -(1) The Secretary of State for Defence may, in the interests of national security, exempt -

(a) any of the home forces, any visiting force or any headquarters from those

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requirements of these Regulations which impose obligations on employers; or

(b) any member of the home forces, any member of a visiting force or any member of a headquarters from the requirements and prohibitions imposed by regulation 11;

and any exemption such as is specified in sub-paragraph (a) or (b) of this paragraph may be granted subject to conditions and to a limit of time and may be revoked by the Secretary of State for Defence in writing.

(2) In this regulation -

(a) "the home forces" has the same meaning as in section 12(1) of the Visiting Forces Act 1952[5];

(b) "visiting force" and "headquarters" have the meanings respectively assigned thereto by article 3(2) of the Visiting Forces and International Headquarters (Application of Law) Order 1965[6]; and

(c) a person shall be regarded as a member of a headquarters where he is a civilian member of a headquarters or a military member of a headquarters (within in either case the meaning assigned thereto by paragraph 1 of the Schedule to the International Headquarters and Defence Organisations Act 1964)[7].

([5]) 1952 c. 67.
([6]) S.I. 1965/1536, to which there are amendments not relevant to these Regulations.
([7]) 1964 c. 5.

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Extension outside Great Britain

14. -(1) These Regulations shall, subject to regulation 2, apply to and in relation to the premises and activities outside Great Britain to which sections 1 to 59 and 80 to 82 of the Health and Safety at Work etc. Act 1974 apply by virtue of the Health and Safety at Work etc. Act 1974 (Application Outside Great Britain) Order 1989[8] as they apply within Great Britain.

(2) For the purposes of Part I of the 1974 Act, the meaning of "at work" shall be extended so that an employee or a self-employed person shall be treated as being at work throughout the time that he is present in the premises to and in relation to which these Regulations apply by virtue of paragraph (1); and, in that connection, these Regulations shall have effect subject to the extension effected by this paragraph.

Modification of instrument

15. The Safety Representatives and Safety Committees Regulations 1977[9] shall be modified to the extent specified in the Schedule to these Regulations.

([8]) S.I. 1989/840.
([9]) S.I. 1977/500.

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The following regulation shall be inserted after regulation 4 of the Safety Representatives and Safety Committees Regulations 1977 -

"Employer's duty to consult and provide facilities and assistance

4A.—(1) Without prejudice to the generality of section 2(6) of the Health and Safety at Work etc. Act 1974, every employer shall consult safety representatives in good time with regard to -

(a) the introduction of any measure at the workplace which may substantially affect the health and safety of the employees the safety representatives concerned represent;

(b) his arrangements for appointing or, as the case may be, nominating persons in accordance with regulations 6(1) and 7(1)(b) of the Health and Safety (General Provisions) Regulations 199-;

(c) any health and safety information required to be provided by him to the employees the safety representatives concerned represent;

(d) the planning and organisation of any health and safety training required to be provided by him to the employees the safety representatives concerned represent; and

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(e) the health and safety consequences for the employees the safety representatives concerned represent of the introduction (including the planning thereof) of new technologies into the workplace.

(2) Without prejudice to regulations 5 and 6 of these Regulations, every employer shall provide such facilities and assistance as safety representatives may reasonably require for the purpose of carrying out their functions under section 2(4) of the 1974 Act and under these Regulations.".

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HEALTH AND SAFETY (GENERAL PROVISIONS) REGULATIONS 199-

APPROVED CODE OF PRACTICE

Preface

This Code of Practice has been approved by the Health and Safety Commission, with the consent of the Secretary of State, under section 16 of the Health and Safety at Work etc Act 1974 for the purpose of providing practical guidance with respect to the provisions of the Health and Safety (General Provisions) Regulations 199- and Sections 2 and 3 of the 1974 Act.

Although failure to comply with any provision of this Code is not in itself an offence, that failure may be taken by a Court in criminal proceedings as proof that a person has contravened the regulation or sections of the 1974 Act to which the provision relates. In such a case, however, it will be open to that person to satisfy a Court that he has complied with the regulation in some other way.

Introduction

The duties of the General Provisions Regulations, because of their wide ranging general nature overlap with many existing regulations. Where duties overlap, compliance with the duty in the more specific regulation will normally be sufficient to comply with the corresponding duty in the General Provisions Regulations. For example, the COSHH Regulations require employers and the self-employed to assess the risks arising from exposure to substances hazardous to health. An assessment made for the purposes of the COSHH Regulations will not need to be repeated for the purposes of the General Provisions Regulations. Other examples where overlap may occur include the appointment of personnel to carry out specific tasks or arrangements for emergencies. However, where the duties in the General Provisions Regulations go

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beyond those in the more specific regulations, additional measures will be needed to comply fully with the General Provisions Regulations.

Words or expressions which are defined in the General Provisions Regulations or in the 1974 Act have the same meaning in this Code unless the context requires otherwise.

REGULATION3

Risk assessment

3. *-(1) Every employer shall adequately assess -*

(a) the risks to the health and safety of his employees to which they are exposed whilst they are at work; and

(b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,

for the purpose of identifying the measures he needs to take to comply with his duties under the relevant statutory provisions.

(2) Every self-employed person shall adequately assess -

(a) the risks to his own health and safety to which he is exposed whilst he is at work; and

(b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,

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for the purpose of identifying the measures he needs to take to comply with his duties under the relevant statutory provisions.

(3) Where an employer or a self-employed person has reason to believe that the assessment is no longer valid because of new or changed risks, he shall revise it by adequately assessing those risks for the purpose of identifying the measures he needs to take to comply with his duties under the relevant statutory provisions.

(4) The references in paragraphs (1) (2) and (3) to assessing risks are references to identifying hazards and evaluating the extent of risk arising therefrom.

(5) Where the employer employs five or more employees -

(a) the assessment shall be in writing; and

(b) he shall record any group of his employees identified by the assessment as being especially at risk.

1. Under these regulations, employers and self-employed persons have to assess the risks to workers and any others who may be affected by their undertaking for the purpose of identifying the measures needed to protect them. The regulations do not stipulate any particular measures to be taken, other than certain procedures to be adopted; the measures in each workplace will derive from compliance with the Health and Safety at Work Act, and its' supporting Acts and Regulations, taking carefully into account the risk assessment. In essence, the risk assessment guides the employers judgement or that of the self employed person, as to the measures they ought to take to fulfil their statutory obligations

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2. A risk assessment consists essentially of an identification of the hazards present in any undertaking (whether arising from work activities or from other factors eg the layout of the premises) and an estimate of the extent of the risks involved, taking into account whatever precautions are already being taken. A hazard is something with the potential to cause harm. Risk is the likelihood of that potential being realized. The extent of the risks is dependent both on the likelihood of something unsafe happening, and the number of people who might be exposed if it did.

3. A risk assessment can be a very common sense process, and in the case of small undertakings presenting few or simple hazards, it generally will be. There may be no need for a precise estimate, but it invariably means taking careful thought, deciding what the hazards are, who are likely to be affected, whether existing preventive measures reduce the risks to a low level, and whether anything more needs to be done. Where such an assessment shows the employer (or self employed persons) that there are risks they cannot evaluate and which are not provided for by obvious and standard precautions (eg makers' instructions) then further thought should be given and advice taken; and this might in turn lead to a fuller assessment of those matters and to additional precautions. How far an assessment proceeds beyond a common sense estimate of particular hazards and situations will depend on the complexity of the undertaking and the degree of the risks present. In the case of complex chemical, mineral extraction, or nuclear plant it may need to be developed so far as to produce the basis for a complete safety case or report for the plant incorporating such techniques as quantified risk assessment. In many intermediate cases it will not be possible adequately to identify the hazards and decide on the extent of the risk without professional knowledge, support and advice in respect at least to the

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more complex processes and techniques in the enterprise. And some risks cannot be properly evaluated without the application of modern techniques of measurement.

4. Whether an assessment is adequate or not depends on whether or not it successfully identifies and estimates the hazards and the population at risk from them and helps the employer or self employed person to take (or ascertain that he has taken) appropriate measures. For a particular employer of self-employed person the population at risk must include any person likely to be affected. Where employees of different employers work in the same workplace their respective employers would have to consider risks to their own employees and to the other employer's employees and may have to co-operate to produce an overall risk assessment. Detailed requirements on co-operation and co-ordination are covered by Regulation 9.

5. In the last resort, the test whether a risk assessment is adequate is if an adverse event takes place, it becomes clear that, though readily foreseeable, it or something like it has not been foreseen and preventive measures taken.

6. The regulations provide for re-assessment of risks. Risk assessment is in fact a continuous process. It needs to be repeated at intervals and may have to be extended or modified from time to time. The need for an extension or modification of an assessment may well be indicated by proper monitoring of eg accidents, near misses or defects in plant revealed under the arrangements required by Regulation 4; or it may be rendered necessary by significant changes in the premises or work activities, or in the nature and size of the workforce.

7. An adequate risk assessment will take account of the type and competence of the workforce and whether it includes groups of people who may be especially at risk from the processes employed -eg young and inexperienced people.

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8. The regulation provides that firms with five or more employees should write down their risk assessment. Such firms are required by Section 2(3) of the Health and Safety at Work Act to have and maintain a written safety policy. The written assessment could be associated with or form part of the same policy document containing the safety policy.

9. The protective measures that have to be taken as stated depend upon the relevant legislation - both the Health and Safety at Work Act and legislation covering particular hazards or sectors of work, and the risk assessment. In deciding upon protective measures employers need to apply the following principles.

(1) it is always best <u>if possible</u> to <u>avoid a risk altogether</u>, eg by not using or stocking a particular dangerous substance or article if it is not essential to the business;

(2) <u>combat risks at source</u>, rather than by ameliorative measures. Thus, if the steps are slippery, treating or replacing them is better than providing a handrail;

(3) <u>wherever possible, adapt work to the individual</u> especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view in particular to alleviating monotonous work and work at a predetermined work rate. This helps reduce possible adverse effects on health and safety;

(4) <u>take advantage of technological and technical progress</u>, which often offers opportunities for improving working methods and making them safer;

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(5) risk prevention measures need to form part of a coherent policy and approach having the effect of progressively reducing those risks that cannot be altogether prevented or avoided, and which will take account of the way work is to be organised, working conditions, the working environment and any relevant social factors. Health and safety policies required under Section 2(3) of the Health and Safety at Work Act should be prepared and applied by reference to these principles;

(6) give a priority to those measures which protect the whole workplace and all those who work there, and so yield the greatest benefit; ie give collective protective measures priority over individual measures;

(7) workers, whether employees or self employed need to understand what they need to do;

(8) the avoidance, prevention and reduction of risks at work needs to be an accepted part of the approach and attitudes at all levels of the organisation and to apply to all its activities, ie the existence of an active health and safety culture affecting the organisation as a whole needs to be assured.

REGULATION 4

Health and safety arrangements

4. *-(1) Every employer shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control,*

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monitoring and review of the protective and preventive measures.

(2) Where the employer employs five or more employees, he shall record the arrangements referred to in paragraph (1).

10. This regulation in effect requires employers to have arrangements in place to cover health and safety. It should be integrated with the management system for all other purposes. The system in place will depend on the size and nature of the activities of the firm but generally will include the following elements which are typical of any other management function;

- Planning: Adopting a systematic approach which identifies priorities and sets objectives. Whenever possible, risks are eliminated by the careful selection and design of facilities, equipment and processes or minimised by the use of physical control measures;

- Organisation: Putting in place the necessary structure with the aim of ensuring that there is a progressive improvement in health and safety performance.

- Control: Ensuring that the decisions for ensuring and promoting health and safety are being implemented as planned.

- Monitoring and review:Like quality, progressive improvement in health and safety can only be achieved through the constant development of policies, approaches to implementation and techniques of risk control.

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11. The regulation also provides that firms with five or more employees should record their arrangements for health and safety. The arrangements recorded should include those competent persons appointed under Regulation 6. As with the written risk assessment, this record could form part of the same document containing the safety policy required under Section 2(3) of the Health and Safety at Work Act.

REGULATION 5

Health surveillance

5. *Every employer shall ensure that his employees are provided with such health surveillance as is appropriate having regard to the risks to their health and safety which are identified by the assessment.]*

12. The risk assessment will identify circumstances in which health surveillance is required by specific health and safety regulations (eg. COSHH, Asbestos). In addition, health surveillance should be introduced where the assessment shows the following criteria to apply:-

(a) there is an identifiable work-related disease or adverse health condition;

(b) valid techniques are available to detect indications of the disease or condition;

(c) there is a reasonable likelihood that the disease or condition may occur under the particular conditions of work; and

(d) surveillance is likely to protect the health of the employees to be surveilled.

13. The potential benefits, and therefore the objectives, of health surveillance should be:-

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(a) to detect adverse health effects at an early stage, thereby preventing further harm;

(b) to check the effectiveness of control measures;

(c) to provide feedback on the accuracy of the risk assessment;

(d) to collect data;

(e) to identify and protect individuals at increased risk.

14. If none of these benefits are likely to be achieved, health surveillance is unlikely to be justified.

15. If health surveillance is considered to be justified, a variety of methods can be used, such as :-

(a) biological monitoring;

(b) biological effect monitoring;

(c) medical surveillance, which may include clinical examination and measurements of physiological and psychological effects by a qualified medical practitioner;

(d) enquiries about symptoms, inspection and examination by a qualified person such as an occupational health nurse;

(e) inspection of readily detectable conditions by a responsible person acting within the limits of their training and experience;

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(f) maintaining a basic health record.

REGULATION 6

Health and safety assistance

6. -(1) Every employer shall, subject to paragraph (2), appoint one or more competent persons to assist him in undertaking the protective and preventive measures.

(2) Nothing in paragraph (1) shall require an employer who is a self-employed person or who is not a body corporate to appoint any person where, having regard to the nature of his activities and the size of his undertaking, he is competent to undertake the protective and preventive measures without any assistance.

(3) Where an employer appoints persons in accordance with paragraph (1), he shall make arrangements for ensuring adequate co-operation between the persons concerned.

(4) The employer shall ensure that the number of persons appointed under paragraph (1), the time available for them to fulfil their functions and the means at their disposal are adequate having regard to the size of his undertaking, the risks to which his employees are exposed and the distribution of those risks throughout the undertaking.

(5) Every employer shall ensure that -

(a) any person appointed by him in accordance with paragraph (1) who is not in his employment -

(i) is informed of the factors known by the employer to affect, or suspected by him of affecting, the health or

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safety of the employer's employees whilst they are at work, and

(ii) has access to the information referred to in regulation 8; and

(b) any person appointed by him in accordance with paragraph (1) is given such information about any person working in the employer's undertaking but employed by an employment business as is necessary to enable a person so appointed properly to carry out the function specified in that paragraph.

(6) A person shall be regarded as competent for the purposes of paragraph (1) or (2) where he has sufficient training, experience, knowledge or other qualities to enable him properly to assist in undertaking the protective and preventive measures or, as the case may be, to undertake the protective and preventive measures without any assistance.

16. An employer must have access to competent help in applying the provisions of these regulations and in particular in devising and applying protective measures unless he is himself competent and can undertake them without assistance. Appointment of competent persons for this purpose should be included among the arrangements recorded under Regulation 4(2).

17. Very often an employer will appoint one or more of his own employees to do all that is necessary or to enlist help or support from outside the organisation. Where the employer is not a corporate body, he can also appoint himself in a personal capacity. Bigger employers may well appoint a whole department with specific responsibilities for safety and health including specialists in such matters as occupational hygiene or safety engineering. In either

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case, where external support is brought in, its activities will need to be co-ordinated by those appointed by the employer to look especially after his health and safety measures.

18. External services employed may well be, and in fact usually will be, appointed in an advisory capacity only. They will often be specialists or general consultants on health and safety matters.

19. The appointment of such assistants, departments or advisers does not detract from the responsibility of the employer and within their respective spheres of his operational managers, for the health and safety of those whose work they organise and manage, and that of others affected by the undertaking. It can do no more than give added assurance that these responsibilities will be discharged adequately.

20. All those appointed by the employer to assist him in his health and safety measures need to be competent to carry out whatever tasks they are assigned and given adequate support. The employer is solely responsible for ensuring competency for these purposes, though naturally he may delegate the tasks to a competent manager. In making his decisions the employer should take into account the need for:

(a) a knowledge and understanding of the work involved, the principles of risk assessment and prevention, and current safety applications and how to identify the implicit hazards;

(b) the capacity to apply this to the task required by the employer which might include identifying the health and safety issues, assessing the need for action, designing and developing strategy and plans, implementing these strategies and

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plans, evaluating their effectiveness and promoting and communicating health and safety and welfare advances and practices.

21. Competence in the sense it is used in these regulations does not necessarily depend on the possession of particular skills or qualifications. In very simple situations it may call most of all for the possession of personal qualities such as common sense and an understanding of the limitations of ones own experience and knowledge and the willingness to supplement it. Increasingly, however, the provision of protective measures particularly in more complex or highly technical situations calls for particular applied knowledge and skills and increasingly, evidence of the possession of these will be based on competence-based qualifications given through bodies accredited by the NCVQ and SCOTVEC.

REGULATION 7

Procedures for serious and imminent danger

7. -(1) Every employer shall -

(a) establish and where necessary give effect to appropriate procedures to be followed in the event of serious and imminent danger to persons at work in his undertaking; and

(b) nominate a sufficient number of competent persons to implement those procedures insofar as they relate to the evacuation from premises of such persons as are specified in sub-paragraph (a) above.

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(2) Without prejudice to the generality of paragraph (1)(a), the procedures referred to in that sub-paragraph shall -

(a) so far as is practicable, require any persons at work who are exposed to serious and imminent danger to be informed of the nature of the hazard and of the steps taken or to be taken to protect them from it;

(b) enable the persons concerned (if necessary by taking appropriate steps in the absence of guidance or instruction and in the light of their knowledge and the technical means at their disposal) to stop work and immediately proceed to a place of safety in the event of their being exposed to serious, imminent and unavoidable danger; and

(c) require the persons concerned to be prevented from resuming work in any situation where there is still a serious and imminent danger.

(3) A person shall be regarded as competent for the purposes of paragraph (1)(b) where he has sufficient training, experience, knowledge or other qualities to enable him properly to implement the evacuation procedures referred to in that sub-paragraph.

22. Specific emergency procedures are required by certain health and safety regulations. Procedures will also be needed to cover other foreseeable events which might give rise to the risk of serious injury to employees. The possibility of such events should be identified in the risk assessment. Procedures may cover different types of

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emergency (eg evacuation in the case of fire or of a toxic gas release), so long as the number of people nominated to implement the procedures is sufficient and employees are adequately informed.

23. Procedures should cater for the fact that emergency events can occur and develop rapidly requiring employees to act without waiting for further guidance. The procedures should specify when and how they are to be activated so that employees can proceed in good time to a place of safety. For example, it may be necessary to commence evacuation while attempts to control an emergency (eg a process in danger of running out of control) are still under way, in case those attempts fail. Special consideration should be given to any key personnel whose actions in an emergency (eg abandoning process controls) might make the situation worse. There may also be actions which employees can take to lessen the consequences of an incident.

24. Emergency procedures should normally be written down (eg under Regulations 4(2)), clearly setting out the limits of actions to be taken by employees. Information on the procedures should be made available to all employees (under Regulation 8), to any external health and safety personnel appointed under Regulation 6(1) and, if necessary, to other workers and/or their employers under Regulation 9. They should also form part of induction training under Regulation 10. It may be advisable to carry out exercises to familiarise employees with the procedures (eg the use of alarms etc. to initiate action) and to test their effectiveness.

25. Work should not be resumed after an emergency if a serious danger remains. If there are any doubts expert assistance should be sought eg from the emergency services and others. The occurrence of an emergency may also indicate the need for an extension or modification of the risk assessment (para 6).

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REGULATION 8

8. *Every employer shall provide his employees with comprehensible and relevant information on -*

(a) the risks to their health and safety identified by the assessment;

(b) the protective and preventive measures;

(c) the procedures referred to in regulation 7(1)(a);

(d) the identity of those persons nominated by him in accordance with regulation 7(1)(b); and

(e) the risks notified to him in accordance with regulation 9(1)(c).

26. The risk assessment will have identified information which has to be provided to employees under specific regulations, as well as any further information relevant to risks to employees' health and safety. Relevant information on risks and on protective and preventive measures will be limited to what employees need to know to ensure their health and safety. The Regulation also requires information to be provided on the emergency arrangements established under Regulation 7, including the identity of staff nominated to assist in the event of evacuation.

27. To be comprehensible, information must be capable of being understood by the employees to whom it is addressed. This should take account of their level of training, knowledge and experience. Special consideration should be given to any employees with language difficulties or with

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physical disabilities which may impede their receipt of information.

28. Information can be provided in whatever form is most suitable in the circumstances, so long as it is comprehensible.

29. This regulation applies to all employees, including trainees and those on fixed-duration contracts. Additional information requirements for employees on fixed-duration contracts are contained in Regulation 12.

REGULATION 9

9. -(1) Where two or more employers share a workplace (whether on a temporary or a permanent basis) each such employer shall -

(a) co-operate with the other employers concerned so far as is necessary to enable them to comply with their duties under the relevant statutory provisions;

(b) (taking into account the nature of his activities) take all reasonable steps to co-ordinate the measures he takes to comply with his duties under the relevant statutory provisions with the measures taken in that regard by the other employers concerned; and

(c) inform the other employers concerned of the risks to their employees' health and safety arising out of or in connection with the conduct by him of his undertaking.

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(2) Paragraph (1) shall apply to employers sharing a workplace with self-employed persons and to self-employed persons sharing a workplace with other self-employed persons as it applies to employers sharing a workplace with other employers; and, accordingly, references in that paragraph to employers and to the employees of employers include references to self-employed persons.

(3) Every employer and every self-employed person shall ensure that the employer of any employees who are working in his undertaking is provided with comprehensible information on -

(a) the risks to those employees' health and safety which arise out of or in connection with the conduct by that first-mentioned employer or by that self-employed person of his undertaking; and

(b) the measures taken by that first-mentioned employer or by that self-employed person in compliance with his duties under the relevant statutory provisions insofar as those duties relate to the employees concerned.

(4) Paragraph (3) shall apply to a self-employed person working in the undertaking of an employer or a self-employed person as it applies to employees working therein; and, accordingly, the references in that paragraph to the employer of any employees who are working in such an undertaking and to those employees shall include a reference to a self-employed person.

(5) Every employer and every self-employed person shall ensure that any person working in his undertaking who is not his employee is provided with appropriate instructions regarding any risks to their health and safety

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arising out of or in connection with the conduct by that employer or self-employed person of his undertaking.

(6) Every employer shall -

(a) ensure that the employer of any employees who are working in his undertaking is provided with sufficient information to enable him to identify any person nominated by that first-mentioned employer in accordance with regulation 7(1)(b) to implement evacuation procedures as far as those employees are concerned; and

(b) take all reasonable steps to ensure that any employees of another employer who are working in his undertaking receive sufficient information to enable them to identify any person nominated by him in accordance with regulation 7(1)(b) to implement evacuation procedures as far as they are concerned.

(7) Paragraph (6) shall apply to a self-employed person working in an employer's undertaking as it applies to employees working therein; and, accordingly, the references in that paragraph to the employer of any employees who are working in such an undertaking and to those employees shall include a reference to a self-employed person.

30. Employers and the self-employed have obligations under the Health and Safety at Work Act towards anyone who may be put at risk by their activities. Where they share premises or workplaces, therefore, it may be necessary to co-operate with each other to ensure that their respective responsibilities are met. This regulation makes specific the duty to co-operate in respect of both on-site and off-site risks. The duty also extends to co-ordinating actions

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to deal with common risks and to exchanging information on risks to employees. Assessment of risk under Regulation 3 and any necessary joint action (e.g. common emergency procedures) will need to cover the workplace as a whole. In multi-occupancy buildings or sites, each unit under the control of an individual tenant will be regarded as separate premises. However, some co-operation will still be necessary among tenants and between tenants and landlord or owner under the general duties of the HSW Act, e.g. in respect of common parts.

31. Where a major occupier controls the work site, undertakings sharing the site will need to provide the major occupier with information to enable the latter to assess the shared risks and co-ordinate any necessary measures. If the major occupier has established site-wide arrangements, new minor occupiers will need to be informed so that they can integrate themselves into these arrangements. Where there is no major occupier, each undertaking should enter into joint arrangements (e.g. the appointment of a health and safety co-ordinator) to fulfil the regulation's requirements. In complex work sites or where significant hazards are present, the major occupier or the undertakings acting jointly may need to seek competent advice in making the risk assessment and determining appropriate measures.

Information to other employers

32. Employers who share premises will need to share information. Employers who are sole occupiers may also have to provide comprehensible information to other employers whose employees carry out work, often for a short time, in the first employer's workplace. Such employees would include:-

a) contractors' employees carrying out cleaning, repair, or maintenance under a service contract;

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b) employees of temporary employment businesses hired to work under the first employer's control (additional requirements for information to employment businesses are under Regulation 12).

33. The risk assessment under Regulation 3 will have identified risks to these people. The information provided must include those risks and the health and safety measures in place to address those risks and be sufficient to enable the other employers to identify any persons that they (the first employer) have nominated to help with emergency evacuation. The first employer also has a duty to take reasonable steps to ensure that the employees of the second employer have indeed received the latter information.

34. People who visit another employer's premises to carry out work must be provided with appropriate instructions regarding relevant risks to their health and safety. Such visitors may also introduce risks to the permanent workforce (e.g. from equipment or substances they may bring with them). Their employers should inform the host employer of such risks, under their general duty under Section 3 of the HSW Act. The risk assessment under Regulation 3(1)(b) should identify the necessary information.

Self-employed

35. Similar duties apply to the self-employed, They should take part in any co-operative or co-ordinating activities or exchange of information where they share premises with employers or other self-employed people. A self-employed contractor working on an employer's premises would be regarded as sharing those premises for the purposes of Regulation 8(2). They will be owed relevant information by the employer for whom they carry out work. In turn, they will owe information to other self-employed or employers whose employees carry out work for them.

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10. -(1) Every employer shall, in entrusting tasks to his employees, take into account their capabilities as regards health and safety.

(2) Every employer shall ensure that his employees are provided with adequate health and safety training -

(a) on their being recruited into the employer's undertaking;

(b) on their being exposed to new or increased risks because of -

(i) their being transferred or given a change of responsibilities within the employer's undertaking;

(ii) the introduction of new work equipment into or a change respecting work equipment already in use within the employer's undertaking;

(iii) the introduction of new technology into the employer's undertaking;

(iv) the introduction of a new system of work into or a change respecting a system of work already in use within the employer's undertaking.

(3) The training referred to in paragraph (2) shall -

(a) be repeated periodically where appropriate;

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(b) be adapted to take account of any new or changed risks to the health or safety of the employees concerned; and

(c) take place during working hours.

36. When allocating work to employees, employers should ensure that the demands of the job do not exceed the employees' ability to carry out the work without risk to themselves or others. Employers should take account of the employees' physical and mental capabilities and the level of their training, knowledge and experience. If additional training is needed, it should be provided.

Training

37. Training is an important way of achieving competence and helps to convert information into safe working practices. It contributes to the organisation's health and safety culture and is needed at all levels, including top management. The risk assessment will indicate what level of training is needed for each post as part of the protective and preventive measures. This can include basic skills training, specific on-the-job training and training in safety or emergency procedures.

38. Training needs are likely to be greatest on recruitment. New employees should receive basic induction training on health and safety, including arrangements for first-aid, fire and evacuation. Particular attention should be given to the needs of young workers. The risk assessment should indicate further specific training needs. In some cases, training may be required even though an employee already holds formal qualifications.

39. Changes in an employee's work environment may cause them to be exposed to new or increased risks, requiring

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further training. The need for further training should be considered when:-

(a) employees transfer or take on new responsibilities. There may be a change in the work activity or in the work environment.

(b) there is a change in the work equipment or systems of work in use. A significant change is likely to need a re-assessment of risks, which may indicate additional training needs. If the change includes introducing completely new technology, it may bring with it new and unfamiliar risks. Competent outside advice may be needed.

Refresher training

40. An employee's competence will decline if skills (eg. in emergency procedures) are not used regularly. Training therefore needs to be repeated periodically to ensure continued competence. Information from personal performance monitoring, safety checks, accident investigations and near miss incidents can help to establish a suitable period for re-training. Special attention should be given to employees who occasionally deputise for others. Their skills are likely to be under-developed and they may need more frequent refresher training.

Adaptation/working hours

41. Changes in risks may also require changes in the content of training, eg where new procedures have been introduced. All health and safety training should take place during working hours. If it is necessary to arrange training outside an employee's normal conditioned hours, this should be treated as an extension of time at work.

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REGULATION 11

Employees' duties

11. *-(1) No employee shall -*

(a) use any machinery, equipment, dangerous substance, transport equipment, means of production or safety device provided to him by his employer other than in accordance with any instruction and training respecting such use which has been provided to him by that employer in compliance with his duties under the relevant statutory provisions; or

(b) interfere with any of the items so provided.

(2) Every employee shall inform his employer or any other employee of that employer with specific responsibility for the health and safety of his fellow employees -

(a) of any work situation which may reasonably be considered to represent a serious and immediate danger to health and safety; and

(b) of any matter which may reasonably be considered to represent a shortcoming in the employer's protection arrangements for health and safety,

insofar as that situation or matter either affects the health and safety of the employee concerned or arises out of or in connection with his own activities at work, and has not previously been reported to that employer or to any

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other employee of that employer in accordance with this paragraph.

42. Employees have a duty under Section 7 of the Health and Safety at Work etc Act 1974 to take reasonable care for their own health and safety and of that of others who may be affected by their acts or omissions at work. Towards this end, employees should use correctly all work items provided by their employer, in accordance with the instruction and training they receive to enable them to use the items safely. Nor should they interfere with any of the work items provided.

43. Employees' duties under Section 7 also include co-operating with their employer to enable the employer to comply with statutory duties for health and safety. Employers or those appointed by employers to assist with health and safety matters therefore need to be informed without delay of any work situation which might present a serious and imminent danger. The danger could be to the employee concerned or, if it results from the employee's work, to others. Employees should also notify any shortcomings in the health and safety arrangements even when no immediate danger exists, so that the employer can take any remedial action that may be needed.

44. The duties placed on employees do not reduce the responsibility of the employer to comply with duties under these regulations and the other relevant statutory provisions. In particular, employers need to ensure that employees receive adequate instruction and training to enable them to comply with their duties under this regulation.

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Temporary workers

12. *-(1) Every self-employed person shall provide any employee of an employment business who is to carry out work in his undertaking with comprehensible information about the risks to that employee's health and safety to which he will be exposed whilst carrying out the work concerned.*

(2) Every employer shall (before the employee concerned commences his duties) provide any person employed by him under a fixed-term contract of employment or working in his undertaking but employed by an employment business with comprehensible information on -

(a) any special occupational qualifications or skills required to be held by that employee if he is to carry out his work safely; and

(b) any health surveillance required to be provided to that employee under any of the relevant statutory provisions.

(3) Every self-employed person shall provide any employee of an employment business who is to carry out work in his undertaking with comprehensible information on -

(a) any special occupational qualifications or skills required to be held by that employee if he is to carry out his work safely; and

(b) any health surveillance required to be provided to that employee under any of the relevant statutory provisions.

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(4) Every employer and every self-employed person shall ensure that every employment business whose employees are to carry out work in his undertaking is provided with comprehensible information on -

(a) any special occupational qualifications or skills required to be held by those employees if they are to carry out their work safely; and

(b) the specific features of the jobs to be filled by those employees (insofar as those features are likely to affect their health and safety);

and the employment business concerned shall ensure that the information so provided is given to the said employees.

45. This regulation supplements previous regulations requiring the provision of information with additional requirements on temporary workers (ie those employed on fixed-duration contracts and those employed by employment businesses, but working under the control of a user company). The use of temporary workers will also have been notified to health and safety personnel appointed under Regulation 6(5).

Fixed-duration contracts

46. Regulation 8 deals with the provision of information by employers to their employees. This includes those on fixed-duration contracts. Under Regulation 12(2), employees on fixed-duration contracts also have to be informed of any special occupational qualifications or skills required to carry out the work safety and whether the job is subject to statutory health surveillance (the latter being in any case a protective measure covered in general by Regulation 8(b)).

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Employment businesses

47. Regulation 9(3) deals with the provision of information by employers to other employers whose employees are working in the first employer's undertaking. This includes employees of employment businesses. Under Regulation 12(4), employment businesses also have to be informed of any special occupational qualifications or skills required to carry out the work safely and the specific features of the job which might affect health and safety (eg work at heights). Both the employment business and the user employer have duties to provide information to the employee. The employment business has a duty under Regulation 8 (as an employer) and a duty under Regulation 12(4) to ensure that the information provided by the user employer is given to the employee. The user employer has a duty under Regulation 9(3) to check that information provided to an employer (including an employment business) is received by the employee. In addition, Regulation 12(2) requires information on qualifications, skills and health surveillance to be provided directly to employees of an employment business.

48. These duties overlap to ensure that the information needs of those working for, but not employed by, user employers are not overlooked. User employers and employment businesses should therefore make suitable arrangements to satisfy themselves that information is provided. In most cases, it may be sufficient for information to be provided directly to the employee by the user employer, who will know the risks and preventive measures in his workplace. The employment business will need to satisfy itself that arrangements for this are adequate. However, basic information on job demands and risks should be supplied to the employment business at an early stage to help select those most suitable to carry out the work (in accordance with Regulation 10(1)).

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Self-employed

49. The self-employed have similar duties under Regulations 9(2) and 9(3) and Regulations 12(1), 12(3) and 12(4) to inform employment businesses and the employees of employment businesses who carry out work in their undertakings. They may also need to agree arrangements with the employment businesses concerned. Self-employed workers hired through employment businesses are entitled to receive health and safety information from the employers or self-employed for whom they carry out work under Regulation 9(2).

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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 12 June 1989

on the introduction of measures to encourage improvements in the safety and health of workers at work

(89/391/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 118a thereof,

Having regard to the proposal from the Commission (1), drawn up after consultation with the Advisory Committee on Safety, Hygiene and Health Protection at Work,

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Article 118a of the Treaty provides that the Council shall adopt, by means of Directives, minimum requirements for encouraging improvements, especially in the working environment, to guarantee a better level of protection of the safety and health of workers;

Whereas this Directive does not justify any reduction in levels of protection already achieved in individual Member States, the Member State being committed, under the Treaty, to encouraging improvements in conditions in this area and to harmonizing conditions while maintaining the improvements made;

Whereas it is known that workers can be exposed to the effects of dangerous environmental factors at the work place during the course of their working life;

Whereas, pursuant to Article 118a of the Treaty, such Directives must avoid imposing administrative, financial and legal constraints which would hold back the creation and development of small and medium-sized undertakings;

Whereas the communication from the Commission on its programme concerning safety, hygiene and health at work (4) provides for the adoption of Directives designed to guarantee the safety and health of workers;

Whereas the Council, in its resolution of 21 December 1987 on safety, hygiene and health at work (5), took note of the Commission's intention to submit to the Council in the near future a Directive on the organization of the safety and health of workers at the work place;

Whereas in February 1988 the European Parliament adopted four resolutions following the debate on the internal market and worker protection; whereas these resolutions specifically invited the Commission to draw up a framework Directive to serve as a basis for more specific Directives covering all the risks connected with safety and health at the work place;

Whereas Member States have a responsibility to encourage improvements in the safety and health of workers on their territory; whereas taking measures to protect the health and safety of workers at work also helps, in certain cases, to preserve the health and possibly the safety of persons residing with them;

(1) OJ No C 141, 30. 5. 1988, p. 1.
(2) OJ No C 326, 19. 12. 1988, p. 102, and OJ No C 158, 26. 6. 1989.
(3) OJ No C 175, 4. 7. 1988, p. 22.
(4) OJ No C 28, 3. 2. 1988, p. 3.
(5) OJ No C 28, 3. 2. 1988, p. 1.

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Whereas Member States' legislative systems covering safety and health at the work place differ widely and need to be improved; whereas national provisions on the subject, which often include technical specifications and/or self-regulatory standards, may result in different levels of safety and health protection and allow competition at the expense of safety and health;

Whereas the incidence of accidents at work and occupational diseases is still too high; whereas preventive measures must be introduced or improved without delay in order to safeguard the safety and health of workers and ensure a higher degree of protection;

Whereas, in order to ensure an improved degree of protection, workers and/or their representatives must be informed of the risks to their safety and health and of the measures required to reduce or eliminate these risks; whereas they must also be in a position to contribute, by means of balanced participation in accordance with national laws and/or practices, to seeing that the necessary protective measures are taken;

Whereas information, dialogue and balanced participation on safety and health at work must be developed between employers and workers and/or their representatives by means of appropriate procedures and instruments, in accordance with national laws and/or practices;

Whereas the improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations;

Whereas employers shall be obliged to keep themselves informed of the latest advances in technology and scientific findings concerning work-place design, account being taken of the inherent dangers in their undertaking, and to inform accordingly the workers' representatives exercising participation rights under this Directive, so as to be able to guarantee a better level of protection of workers' health and safety;

Whereas the provisions of this Directive apply, without prejudice to more stringent present or future Community provisions, to all risks, and in particular to those arising from the use at work of chemical, physical and biological agents covered by Directive 80/1107/EEC [1], as last amended by Directive 88/642/EEC [2];

Whereas, pursuant to Decision 74/325/EEC [3], the Advisory Committee on Safety, Hygiene and Health Protection at Work is consulted by the Commission on the drafting of proposals in this field;

Whereas a Committee composed of members nominated by the Member States needs to be set up to assist the Commission in making the technical adaptations to the individual Directives provided for in this Directive.

HAS ADOPTED THIS DIRECTIVE:

SECTION I

GENERAL PROVISIONS

Article 1

Object

1. The object of this Directive is to introduce measures to encourage improvements in the safety and health of workers at work.

2. To that end it contains general principles concerning the prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors, the informing, consultation, balanced participation in accordance with national laws and/or practices and training of workers and their representatives, as well as general guidelines for the implementation of the said principles.

3. This Directive shall be without prejudice to existing or future national and Community provisions which are more favourable to protection of the safety and health of workers at work.

Article 2

Scope

1. This Directive shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.).

2. This Directive shall not be applicable where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it.

In that event, the safety and health of workers must be ensured as far as possible in the light of the objectives of this Directive.

[1] OJ No L 327, 3. 12. 1980, p. 8.
[2] OJ No L 356, 24. 12. 1988, p. 74.
[3] OJ No L 185, 9. 7. 1974, p. 15.

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Article 3

Definitions

For the purposes of this Directive, the following terms shall have the following meanings:

(a) worker: any person employed by an employer, including trainees and apprentices but excluding domestic servants;

(b) employer: any natural or legal person who has an employment relationship with the worker and has responsibility for the undertaking and/or establishment;

(c) workers' representative with specific responsibility for the safety and health of workers: any person elected, chosen or designated in accordance with national laws and/or practices to represent workers where problems arise relating to the safety and health protection of workers at work;

(d) prevention: all the steps or measures taken or planned at all stages of work in the undertaking to prevent or reduce occupational risks.

Article 4

1. Member States shall take the necessary steps to ensure that employers, workers and workers' representatives are subject to the legal provisions necessary for the implementation of this Directive.

2. In particular, Member States shall ensure adequate controls and supervision.

SECTION II

EMPLOYERS' OBLIGATIONS

Article 5

General provision

1. The employer shall have a duty to ensure the safety and health of workers in every aspect related to the work.

2. Where, pursuant to Article 7 (3), an employer enlists competent external services or persons, this shall not discharge him from his responsibilities in this area.

3. The workers' obligations in the field of safety and health at work shall not affect the principle of the responsibility of the employer.

4. This Directive shall not restrict the option of Member States to provide for the exclusion or the limitation of employers' responsibility where occurrences are due to unusual and unforeseeable circumstances, beyond the employers' control, or to exceptional events, the consequences of which could not have been avoided despite the exercise of all due care.

Member States need not exercise the option referred to in the first subparagraph.

Article 6

General obligations on employers

1. Within the context of his responsibilities, the employer shall take the measures necessary for the safety and health protection of workers, including prevention of occupational risks and provision of information and training, as well as provision of the necessary organization and means.

The employer shall be alert to the need to adjust these measures to take account of changing circumstances and aim to improve existing situations.

2. The employer shall implement the measures referred to in the first subparagraph of paragraph 1 on the basis of the following general principles of prevention:

(a) avoiding risks;

(b) evaluating the risks which cannot be avoided:

(c) combating the risks at source;

(d) adapting the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health.

(e) adapting to technical progress;

(f) replacing the dangerous by the non-dangerous or the less dangerous;

(g) developing a coherent overall prevention policy which covers technology, organization of work, working conditions, social relationships and the influence of factors related to the working environment;

(h) giving collective protective measures priority over individual protective measures;

(i) giving appropriate instructions to the workers.

3. Without prejudice to the other provisions of this Directive, the employer shall, taking into account the nature of the activities of the enterprise and/or establishment:

(a) evaluate the risks to the safety and health of workers, *inter alia* in the choice of work equipment, the chemical substances or preparations used, and the fitting-out of work places.

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Subsequent to this evaluation and as necessary, the preventive measures and the working and production methods implemented by the employer must:

— assure an improvement in the level of protection afforded to workers with regard to safety and health,

— be integrated into all the activities of the undertaking and/or establishment and at all hierarchical levels;

(b) where he entrusts tasks to a worker, take into consideration the worker's capabilities as regards health and safety;

(c) ensure that the planning and introduction of new technologies are the subject of consultation with the workers and/or their representatives, as regards the consequences of the choice of equipment, the working conditions and the working environment for the safety and health of workers;

(d) take appropriate steps to ensure that only workers who have received adequate instructions may have access to areas where there is serious and specific danger.

4. Without prejudice to the other provisions of this Directive, where several undertakings share a work place, the employers shall cooperate in implementing the safety, health and occupational hygiene provisions and, taking into account the nature of the activities, shall coordinate their actions in matters of the protection and prevention of occupational risks, and shall inform one another and their respective workers and/or workers' representatives of these risks.

5. Measures related to safety, hygiene and health at work may in no circumstances involve the workers in financial cost.

Article 7

Protective and preventive services

1. Without prejudice to the obligations referred to in Articles 5 and 6, the employer shall designate one or more workers to carry out activities related to the protection and prevention of occupational risks for the undertaking and/or establishment.

2. Designated workers may not be placed at any disadvantage because of their activities related to the protection and prevention of occupational risks.

Designated workers shall be allowed adequate time to enable them to fulfil their obligations arising from this Directive.

3. If such protective and preventive measures cannot be organized for lack of competent personnel in the undertaking and/or establishment, the employer shall enlist competent external services or persons.

4. Where the employer enlists such services or persons, he shall inform them of the factors known to affect, or suspected of affecting, the safety and health of the workers and they must have access to the information referred to in Article 10 (2).

5. In all cases:

— the workers designated must have the necessary capabilities and the necessary means,

— the external services or persons consulted must have the necessary aptitudes and the necessary personal and professional means, and

— the workers designated and the external services or persons consulted must be sufficient in number

to deal with the organization of protective and preventive measures, taking into account the size of the undertaking and/or establishment and/or the hazards to which the workers are exposed and their distribution throughout the entire undertaking and/or establishment.

6. The protection from, and prevention of, the health and safety risks which form the subject of this Article shall be the responsibility of one or more workers, of one service or of separate services whether from inside or outside the undertaking and/or establishment.

The worker(s) and/or agency(ies) must work together whenever necessary.

7. Member States may define, in the light of the nature of the activities and size of the undertakings, the categories of undertakings in which the employer, provided he is competent, may himself take responsibility for the measures referred to in paragraph 1.

8. Member States shall define the necessary capabilities and aptitudes referred to in paragraph 5.

They may determine the sufficient number referred to in paragraph 5.

Article 8

First aid, fire-fighting and evacuation of workers, serious and imminent danger

1. The employer shall:

— take the necessary measures for first aid, fire-fighting and evacuation of workers, adapted to the nature of the

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activities and the size of the undertaking and/or establishment and taking into account other persons present,

— arrange any necessary contacts with external services, particularly as regards first aid, emergency medical care, rescue work and fire-fighting.

2. Pursuant to paragraph 1, the employer shall, *inter alia,* for first aid, fire-fighting and the evacuation of workers, designate the workers required to implement such measures.

The number of such workers, their training and the equipment available to them shall be adequate, taking account of the size and/or specific hazards of the undertaking and/or establishment.

3. The employer shall:

(a) as soon as possible, inform all workers who are, or may be, exposed to serious and imminent danger of the risk involved and of the steps taken or to be taken as regards protection;

(b) take action and give instructions to enable workers in the event of serious, imminent and unavoidable danger to stop work and/or immediately to leave the work place and proceed to a place of safety;

(c) save in exceptional cases for reasons duly substantiated, refrain from asking workers to resume work in a working situation where there is still a serious and imminent danger.

4. Workers who, in the event of serious, imminent and unavoidable danger, leave their workstation and/or a dangerous area may not be placed at any disadvantage because of their action and must be protected against any harmful and unjustified consequences, in accordance with national laws and/or practices.

5. The employer shall ensure that all workers are able, in the event of serious and imminent danger to their own safety and/or that of other persons, and where the immediate superior responsible cannot be contacted, to take the appropriate steps in the light of their knowledge and the technical means at their disposal, to avoid the consequences of such danger.

Their actions shall not place them at any disadvantage, unless they acted carelessly or there was negligence on their part.

Article 9

Various obligations on employers

1. The employer shall:

(a) be in possession of an assessment of the risks to safety and health at work, including those facing groups of workers exposed to particular risks;

(b) decide on the protective measures to be taken and, if necessary, the protective equipment to be used;

(c) keep a list of occupational accidents resulting in a worker being unfit for work for more than three working days;

(d) draw up, for the responsible authorities and in accordance with national laws and/or practices, reports on occupational accidents suffered by his workers.

2. Member States shall define, in the light of the nature of the activities and size of the undertakings, the obligations to be met by the different categories of undertakings in respect of the drawing-up of the documents provided for in paragraph 1 (a) and (b) and when preparing the documents provided for in paragraph 1 (c) and (d).

Article 10

Worker information

1. The employer shall take appropriate measures so that workers and/or their representatives in the undertaking and/or establishment receive, in accordance with national laws and/or practices which may take account, *inter alia,* of the size of the undertaking and/or establishment, all the necessary information concerning:

(a) the safety and health risks and protective and preventive measures and activities in respect of both the undertaking and/or establishment in general and each type of workstation and/or job;

(b) the measures taken pursuant to Article 8 (2).

2. The employer shall take appropriate measures so that employers of workers from any outside undertakings and/or establishments engaged in work in his undertaking and/or establishment receive, in accordance with national laws and/or practices, adequate information concerning the points referred to in paragraph 1 (a) and (b) which is to be provided to the workers in question.

3. The employer shall take appropriate measures so that workers with specific functions in protecting the safety and health of workers, or workers' representatives with specific responsibility for the safety and health of workers shall have access, to carry out their functions and in accordance with national laws and/or practices, to:

(a) the risk assessment and protective measures referred to in Article 9 (1) (a) and (b);

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(b) the list and reports referred to in Article 9 (1) (c) and (d);

(c) the information yielded by protective and preventive measures, inspection agencies and bodies responsible for safety and health.

Article 11

Consultation and participation of workers

1. Employers shall consult workers and/or their representatives and allow them to take part in discussions on all questions relating to safety and health at work.

This presupposes:

— the consultation of workers,

— the right of workers and/or their representatives to make proposals,

— balanced participation in accordance with national laws and/or practices.

2. Workers or workers' representatives with specific responsibility for the safety and health of workers shall take part in a balanced way, in accordance with national laws and/or practices, or shall be consulted in advance and in good time by the employer with regard to:

(a) any measure which may substantially affect safety and health;

(b) the designation of workers referred to in Articles 7 (1) and 8 (2) and the activities referred to in Article 7 (1);

(c) the information referred to in Articles 9 (1) and 10;

(d) the enlistment, where appropriate, of the competent services or persons outside the undertaking and/or establishment, as referred to in Article 7 (3);

(e) the planning and organization of the training referred to in Article 12.

3. Workers' representatives with specific responsibility for the safety and health of workers shall have the right to ask the employer to take appropriate measures and to submit proposals to him to that end to mitigate hazards for workers and/or to remove sources of danger.

4. The workers referred to in paragraph 2 and the workers' representatives referred to in paragraphs 2 and 3 may not be placed at a disadvantage because of their respective activities referred to in paragraphs 2 and 3.

5. Employers must allow workers' representatives with specific responsibility for the safety and health of workers adequate time off work, without loss of pay, and provide them with the necessary means to enable such representatives to exercise their rights and functions deriving from this Directive.

6. Workers and/or their representatives are entitled to appeal, in accordance with national law and/or practice, to the authority responsible for safety and health protection at work if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health at work.

Workers' representatives must be given the opportunity to submit their observations during inspection visits by the competent authority.

Article 12

Training of workers

1. The employer shall ensure that each worker receives adequate safety and health training, in particular in the form of information and instructions specific to his workstation or job:

— on recruitment,

— in the event of a transfer or a change of job,

— in the event of the introduction of new work equipment or a change in equipment,

— in the event of the introduction of any new technology.

The training shall be:

— adapted to take account of new or changed risks, and

— repeated periodically if necessary.

2. The employer shall ensure that workers from outside undertakings and/or establishments engaged in work in his undertaking and/or establishment have in fact received appropriate instructions regarding health and safety risks during their activities in his undertaking and/or establishment.

3. Workers' representatives with a specific role in protecting the safety and health of workers shall be entitled to appropriate training.

4. The training referred to in paragraphs 1 and 3 may not be at the workers' expense or at that of the workers' representatives.

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The training referred to in paragraph 1 must take place during working hours.

The training referred to in paragraph 3 must take place during working hours or in accordance with national practice either within or outside the undertaking and/or the establishment.

SECTION III

WORKERS' OBLIGATIONS

Article 13

1. It shall be the responsibility of each worker to take care as far as possible of his own safety and health and that of other persons affected by his acts or Commissions at work in accordance with his training and the instructions given by his employer.

2. To this end, workers must in particular, in accordance with their training and the instructions given by their employer:

(a) make correct use of machinery, apparatus, tools, dangerous substances, transport equipment and other means of production;

(b) make correct use of the personal protective equipment supplied to them and, after use, return it to its proper place;

(c) refrain from disconnecting, changing or removing arbitrarily safety devices fitted, e.g. to machinery, apparatus, tools, plant and buildings, and use such safety devices correctly;

(d) immediately inform the employer and/or the workers with specific responsibility for the safety and health of workers of any work situation they have reasonable grounds for considering represents a serious and immediate danger to safety and health and of any shortcomings in the protection arrangements;

(e) cooperate, in accordance with national practice, with the employer and/or workers with specific responsibility for the safety and health of workers, for as long as may be necessary to enable any tasks or requirements imposed by the competent authority to protect the safety and health of workers at work to be carried out;

(f) cooperate, in accordance with national practice, with the employer and/or workers with specific responsibility for the safety and health of workers, for as long as may be necessary to enable the employer to ensure that the working environment and working conditions are safe and pose no risk to safety and health within their field of activity.

SECTION IV

MISCELLANEOUS PROVISIONS

Article 14

Health surveillance

1. To ensure that workers receive health surveillance appropriate to the health and safety risks they incur at work, measures shall be introduced in accordance with national law and/or practices.

2. The measures referred to in paragraph 1 shall be such that each worker, if he so wishes, may receive health surveillance at regular intervals.

3. Health surveillance may be provided as part of a national health system.

Article 15

Risk groups

Particularly sensitive risk groups must be protected against the dangers which specifically affect them.

Article 16

Individual Directives — Amendments —

General scope of this Directive

1. The Council, acting on a proposal from the Commission based on Article 118a of the Treaty, shall adopt individual Directives, *inter alia*, in the areas listed in the Annex.

2. This Directive and, without prejudice to the procedure referred to in Article 17 concerning technical adjustments, the individual Directives may be amended in accordance with the procedure provided for in Article 118a of the Treaty.

3. The provisions of this Directive shall apply in full to all the areas covered by the individual Directives, without prejudice to more stringent and/or specific provisions contained in these individual Directives.

Article 17

Committee

1. For the purely technical adjustments to the individual Directives provided for in Article 16 (1) to take account of:

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— the adoption of Directives in the field of technical harmonization and standardization, and/or

— technical progress, changes in international regulations or specifications, and new findings,

the Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken.

The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter.

The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission.

The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of three months from the date of the referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 18

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992.

They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they have already adopted or adopt in the field covered by this Directive.

3. Member States shall report to the Commission every five years on the practical implementation of the provisions of this Directive, indicating the points of view of employers and workers.

The Commission shall inform the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health Protection at Work.

4. The Commission shall submit periodically to the European Parliament, the Council and the Economic and Social Committee a report on the implementation of this Directive, taking into account paragraphs 1 to 3.

Article 19

This Directive is addressed to the Member States.

Done at Luxembourg, 12 June 1989.

For the Council
The President
M. CHAVES GONZALES

ANNEX

List of areas referred to in Article 16 (1)

— Work places
— Work equipment
— Personal protective equipment
— Work with visual display units
— Handling of heavy loads involving risk of back injury
— Temporary or mobile work sites
— Fisheries and agriculture

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COUNCIL DIRECTIVE

of 25 June 1991

supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship

(91/383/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 118a thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Article 118a of the Treaty provides that the Council shall adopt, by means of Directives, minimum requirements for encouraging improvements, especially in the working environment, to guarantee a better level of protection of the safety and health of workers;

Whereas, pursuant to the said Article, Directives must avoid imposing administrative, financial and legal constraints which would hold back the creation and development of small and medium-sized undertakings;

Whereas recourse to forms of employment such as fixed-duration employment and temporary employment has increased considerably;

Whereas research has shown that in general workers with a fixed-duration employment relationship or temporary employment relationship are, in certain sectors, more exposed to the risk of accidents at work and occupational diseases than other workers;

Whereas these additional risks in certain sectors are in part linked to certain particular modes of integrating new workers into the undertaking; whereas these risks can be reduced through adequate provision of information and training from the beginning of employment;

Whereas the Directives on health and safety at work, notably Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (4), contain provisions intended to improve the safety and health of workers in general;

Whereas the specific situation of workers with a fixed-duration employment relationship or a temporary employment relationship and the special nature of the risks they face in certain sectors calls for special additional rules, particularly as regards the provision of information, the training and the medical surveillance of the workers concerned;

Whereas this Directive constitutes a practical step within the framework of the attainment of the social dimension of the internal market,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

SCOPE AND OBJECT

Article 1

Scope

This Directive shall apply to:

1. employment relationships governed by a fixed-duration contract of employment concluded directly between the employer and the worker, where the end of the contract is established by objective conditions such as: reaching a specific date, completing a specific task or the occurence of a specific event;

2. temporary employment relationships between a temporary employment business which is the employer and the worker, where the latter is assigned to work for and under the control of an undertaking and/or establishment making use of his services.

(1) OJ No C 224, 8. 9. 1990, p. 4.
(2) Opinion delivered on 20 November 1990 (not yet published in the Official Journal) and OJ No C 158, 17. 6. 1991.
(3) OJ No C 332, 31. 12. 1990, p. 167

(4) OJ No L 183, 29. 6. 1989, p. 1.

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Article 2

Object

1. The purpose of this Directive is to ensure that workers with an employment relationship as referred to in Article 1 are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment.

2. The existence of an employment relationship as referred to in Article 1 shall not justify different treatment with respect to working conditions inasmuch as the protection of safety and health at work are involved, especially as regards access to personal protective equipment.

3. Directive 89/391/EEC and the individual Directives within the meaning of Article 16 (1) thereof shall apply in full to workers with an employment relationship as referred to in Article 1, without prejudice to more binding and/or more specific provisions set out in this Directive.

SECTION II

GENERAL PROVISIONS

Article 3

Provision of information to workers

Without prejudice to Article 10 of Directive 89/391/EEC, Member States shall take the necessary steps to ensure that:

1. before a worker with an employment relationship as referred to in Article 1 takes up any activity, he is informed by the undertaking and/or establishment making use of his services of the risks which he faces;

2. such information:

   — covers, in particular, any special occupational qualifications or skills or special medical surveillance required, as defined in national legislation, and

   — states clearly any increased specific risks, as defined in national legislation, that the job may entail.

Article 4

Workers' training

Without prejudice to Article 12 of Directive 89/391/EEC, Member States shall take the necessary measures to ensure that, in the cases referred to in Article 3, each worker receives sufficient training appropriate to the particular characteristics of the job, account being taken of his qualifications and experience.

Article 5

Use of workers' services and medical surveillance of workers

1. Member States shall have the option of prohibiting workers with an employment relationship as referred to in Article 1 from being used for certain work as defined in national legislation, which would be particularly dangerous to their safety or health, and in particular for certain work which requires special medical surveillance, as defined in national legislation.

2. Where Member States do not avail themselves of the option referred to in paragraph 1, they shall, without prejudice to Article 14 of Directive 89/391/EEC, take the necessary measures to ensure that workers with an employment relationship as referred to in Article 1 who are used for work which requires special medical surveillance, as defined in national legislation, are provided with appropriate special medical surveillance.

3. It shall be open to Member States to provide that the appropriate special medical surveillance referred to in paragraph 2 shall extend beyond the end of the employment relationship of the worker concerned.

Article 6

Protection and prevention services

Member States shall take the necessary measures to ensure that workers, services or persons designated, in accordance with Article 7 of Directive 89/391/EEC, to carry out activities related to protection from and prevention of occupational risks are informed of the assignment of workers with an employment relationship as referred to in Article 1, to the extent necessary for the workers, services or persons designated to be able to carry out adequately their protection and prevention activities for all the workers in the undertaking and/or establishment.

SECTION III

SPECIAL PROVISIONS

Article 7

Temporary employment relationships: information

Without prejudice to Article 3, Member States shall take the necessary steps to ensure that:

1. before workers with an employment relationship as referred to in Article 1 (2) are supplied, a user undertaking and/or establishment shall specify to the temporary employment business, *inter alia*, the occupational qualifications required and the specific features of the job to be filled;

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2. the temporary employment business shall bring all these facts to the attention of the workers concerned.

Member States may provide that the details to be given by the user undertaking and/or establishment to the temporary employment business in accordance with point 1 of the first subparagraph shall appear in a contract of assignment.

Article 8

Temporary employment relationships: responsibility

Member States shall take the necessary steps to ensure that:

1. without prejudice to the responsibility of the temporary employment business as laid down in national legislation, the user undertaking and/or establishment is/are responsible, for the duration of the assignment, for the conditions governing performance of the work;

2. for the application of point 1, the conditions governing the performance of the work shall be limited to those connected with safety, hygiene and health at work.

SECTION IV

MISCELLANEOUS PROVISIONS

Article 9

More favourable provisions

This Directive shall be without prejudice to existing or future national or Community provisions which are more favourable to the safety and health protection of workers with an employment relationship as referred to in Article 1.

Article 10

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, the latter shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall forward to the Commission the texts of the provisions of national law which they have already adopted or adopt in the field covered by this Directive.

3. Member States shall report to the Commission every five years on the practical implementation of this Directive, setting out the points of view of workers and employers.

The Commission shall bring the report to the attention of the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health Protection at Work.

4. The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a regular report on the implementation of this Directive, due account being taken of paragraphs 1, 2 and 3.

Article 11

This Directive is addressed to the Member States.

Done at Luxembourg, 25 June 1991

For the Council

The President

J.-C. JUNCKER

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